

BRB No. 07-0546

D.L.	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DEPARTMENT OF THE ARMY/NAF	)	DATE ISSUED:
	)	11/23/2007 <u>2007</u>
Self-Insured	)	
Employer-Respondent	)	
		DECISION and ORDER

Appeal of the Decision and Order-Approving Settlement and the Order on Motion for Reconsideration of Patrick M. Rosenow, Administrative Law Judge, United States Department of Labor.

D.L., Muskogee, Oklahoma, *pro se*.

Lawrence P. Postol (Seyfarth Shaw LLP), Washington, D.C., for self-insured employer.

Before: DOLDER, Chief Administrative Appeals Judge, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant, appearing without legal representation, appeals the Decision and Order-Approving Settlement and the Order on Motion for Reconsideration (2005-LHC-00875) of Administrative Law Judge Patrick M. Rosenow rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.*, as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *et seq.* (the Act). In reviewing an appeal where claimant is not represented by counsel, the Board will review the administrative law judge's findings of fact and conclusions of law in order to determine if they are supported by substantial evidence, are rational, and are in accordance with law; if they are, they must be affirmed. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant asserted she injured her neck, back, shoulders, arms and legs from pushing a heavy cart during the course of her employment for employer on March 26, 2002. Claimant also alleged she sustained a psychological injury as a result of her physical injuries. Employer voluntarily paid claimant \$34,639.12 in compensation and \$38,054.08 in medical benefits. A formal hearing was held on December 19, 2005, where claimant was not represented by counsel. Claimant obtained counsel in August 2006; thereafter, the administrative law judge issued briefing deadlines for January 2007. After a settlement conference, the parties informed the administrative law judge in December 2006 that a settlement had been reached. In a Decision and Order filed on February 7, 2007, the administrative law judge approved a settlement agreement under Section 8(i) of the Act, 33 U.S.C. §908(i), wherein claimant agreed to terminate her entitlement to future compensation and medical benefits, and employer provided a lump sum payment to claimant of \$25,000, representing \$5,000 in compensation and \$20,000 in medical benefits. The administrative law judge found that the settlement application complied with the regulatory criteria and that the agreement was adequate, in claimant's best interest and not procured by fraud or duress.

On March 7, 2007, claimant, who at this time was not represented by counsel, requested reconsideration of the administrative law judge's approval of the settlement agreement. In his Order on Motion for Reconsideration, the administrative law judge found that claimant's motion for reconsideration was not timely filed. Alternatively, the administrative law judge addressed claimant's objections to the settlement agreement, and found that, based on the evidence submitted at the formal hearing, proceeding to a final decision would have been a high risk strategy for claimant. The administrative law judge concluded that the settlement agreement was fair, equitable, and in claimant's best interest.

On appeal, claimant, without the assistance of counsel, challenges the administrative law judge's approval of the settlement and his denial of her motion for reconsideration. Employer responds, urging affirmance.

Section 8(i) provides for the settlement of "any claim for compensation under this chapter" by a procedure in which an application for settlement is submitted for the approval of the district director or administrative law judge.<sup>1</sup> Claimants are not permitted

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<sup>1</sup>Section 8(i)(1) states:

Whenever the parties to any claim for compensation under this chapter, including survivors benefits, agree to a settlement, the deputy commissioner or administrative law judge shall approve the settlement within thirty days unless it is found to be inadequate or procured by duress. Such settlement may include future

to waive their right to compensation except through settlements approved under Section 8(i). *See* 33 U.S.C. §§915, 916; *see generally Henson v. Arcwel Corp.*, 27 BRBS 212 (1993); *Norton v. National Steel & Shipbuilding Co.*, 25 BRBS 79 (1991), *aff'd on recon. en banc*, 27 BRBS 33 (1993)(Brown, J., dissenting). The procedures governing settlement agreements are delineated in the Act's implementing regulations. *See* 20 C.F.R. §§702.241-702.243. These regulations ensure that the approving official obtains the information necessary to determine whether the agreement is inadequate or procured by duress. *McPherson v. National Steel & Shipbuilding Co.*, 26 BRBS 71 (1992), *aff'g on recon. en banc*, 24 BRBS 224 (1991).

Upon review of the settlement agreement, we hold that the administrative law judge acted within his discretion to approve the agreement and to deny on the merits claimant's motion for reconsideration.<sup>2</sup> Specifically, the agreement states the terms of the settlement,<sup>3</sup> delineates the issues in dispute,<sup>4</sup> references medical reports submitted to the administrative law judge at the formal hearing, and explicitly provides that claimant agrees to terminate her rights under the Act to future compensation and medical treatment. The administrative law judge correctly found that Section 702.242(b)(7) provides that the administrative law judge may waive for good cause the requirement that the agreement contain a three-year itemization of past medical expenses, and he rationally granted a waiver in this case on the basis that the record developed at the

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medical benefits if the parties so agree. No liability of any employer, carrier, or both for medical, disability, or death benefits shall be discharged unless the application for settlement is approved by the deputy commissioner or administrative law judge. If the parties to the settlement are represented by counsel, then agreements shall be deemed approved unless specifically disapproved within thirty days after submission for approval.

33 U.S.C. §908(i)(1).

<sup>2</sup> Accordingly, we need not address the administrative law judge's finding that claimant's motion for reconsideration was not timely filed.

<sup>3</sup> The agreement states that \$4,950 is for compensation, \$50 is for back pay, \$20,000 is for medical expenses, and an additional up to \$2,500 is for claimant's attorney's fee.

<sup>4</sup> The agreement states that the parties disputed the issues of causation, nature and extent of disability, Section 7 compliance, 33 U.S.C. §907, and Section 49 retaliatory discharge, 33 U.S.C. §948a.

formal hearing contains sufficient evidence to assess the medical expense history.<sup>5</sup> The agreement contains claimant's notarized signature, as well as the signatures of claimant's and employer's attorneys. Thus, the administrative law judge properly found that the regulatory criteria for a complete settlement application were satisfied. 20 C.F.R. §702.242; *Poole v. Ingalls Shipbuilding, Inc.*, 27 BRBS 230 (1993).

On reconsideration, the administrative law judge found that claimant was represented by counsel, the agreement was reached after a conference before an experienced administrative law judge, and that the agreement is clear, concise and provides above claimant's signature that it was not procured by intimidation, pressure, coercion, or duress. The administrative law judge properly found that claimant is not required by statute or regulation to initial every line in the settlement agreement, and rationally concluded that her signature at the end of the agreement signifies her consent notwithstanding her failure to initial certain subsections. The administrative law judge found that claimant's change of heart about settling her claim is not a basis for granting reconsideration in view of her knowingly, voluntarily, and on advice of counsel, signing the settlement agreement. Finally, after having presided at the formal hearing where the parties submitted evidence into the record, the administrative law judge found that proceeding to a final decision would have been a high risk strategy for claimant, and that, therefore, the settlement agreement is fair, equitable, and in claimant's best interest. As the administrative law judge's prior participation in this case rendered him particularly suited to assess the adequacy of the settlement agreement, and as the agreement complies with the regulatory criteria, we affirm the administrative law judge's approval of the settlement agreement and the denial of claimant's motion for reconsideration. See *Rochester v. George Washington University*, 30 BRBS 233 (1997); *Poole*, 27 BRBS 230.

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<sup>5</sup> The agreement states that employer has paid \$38,054.08 in medical benefits in the preceding three years.

Accordingly, the administrative law judge's Decision and Order-Approving Settlement and the Order on Motion for Reconsideration are affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge